IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Civil Revision No.172 of 2006.

Date of decision:27.11.2007

Chandu **….Petitioner-Plaintiff**

Versus

Jaram Singh & Others **….Respondents-Defendants**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?[1]

For the Petitioner: Mr.Ramakant Sharma, Advocate.

For the Respondents: None.

Dev Darshan Sud,J.

The respondents have been served by way of publication. None appears on their behalf. They are proceeded ex-parte.

The plaintiff, who is petitioner in the present revision petition, is aggrieved by the order passed by the learned trial Court on 7.4.2006 dismissing the suit for non-prosecution and the subsequent order dated 30.9.2006 dismissing an application filed by the plaintiff under Order 9 Rule 4 of the Code of Civil Procedure praying for recalling the order dated 7.4.2006. The learned trial Court observed that steps for service of

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement*?**

defendants No.1 to 3 were not taken within time. Some other observations were also made against the defendants which would not be necessary to consider by this Court.

I have heard learned counsel for the petitioner and have gone through the record of the case.

I am not satisfied that the learned trial Court has exercised its jurisdiction in accordance with law. A reading of the order discloses that the learned trial Court has taken a hyper-technical view in rejecting the application under Order 9 Rule 4. It is clear from the record that steps for service of defendants No.1 to 3 had already been taken by the plaintiff-petitioner and the delay was satisfactorily explained. The learned trial Court acted illegally in the exercise of the jurisdiction in not considering the reasons for the slight delay which had occurred in filing the process etc. The Hon'ble Supreme Court has time and again emphasized that the approach of a Court of law should be justice oriented and should not be based on hyper-technical interpretation of procedural law. Of-course, this does not mean that inaction on the part of a party is to be ignored on every account. From the record of the case, I find that the judgment does not consider the reasons put forth by the petitioner.

In the facts and circumstances of the case, this revision petition is allowed. The order dated 30.9.2006 of the learned trial Court rejecting the application of the petitioner-plaintiff under Order 9 Rule 4 is quashed and set aside. A direction is issued to the trial Court to proceed with the suit with expedition, in accordance with law. The Registry is directed to send back the record of the trial Court immediately. There shall be no order as to costs.

November 27, 2007 **(Dev Darshan Sud)**
(aks) **Judge**